HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1068 of 2002(SB)

Jaswant Singh

Versus

B.H.E.L. and others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision:13.10.2003

Initial of Judge

In the High Court of Uttranchal at Nainital

Court No.6

Writ Petition No. 1068 of 2002 (S/B)

Jaswant Singh
S/o Narayan Singh
R/o Bhabhutawala Bagh
Near Tibri Water House,
Haridwar …….. Petitioner

Vs.

1. Bhart Heavy Electricals ltd.
having it Corporate and
Registered office at Bhel House Siri Fort,
New Delhi

2. Bharat Heavy Electricals Ltd.
Ranipur
Haridwar

3. Estate Officer Dept. Bharat
Heavy Electricals Ltd.
Ranipur, Haridwar …….. Opposite party

Counsel for the Petitioner :- Sri anil Kumar Joshi
Counsel for the Respondent :- Sri V.K. Kohli
Date of Judgment :- 13.10.2003

Hon'ble Rajesh Tandon, J.

By the present Writ Petition, the petitioner has prayed for the issue of a writ, order or direction in the nature of mandamus commanding the opposite parties to pay the amount due under the Voluntary Retirement Scheme (VRS) along with 18% per annum w.e.f. 24.7.2001 till the date of actual payment. The petitioner has also sought a relief regarding the payment of the amount of gratuity and other retrial dues with interest.

Heard the learned counsel for the petitioner as well as the respondent.

Both the parties have admitted that so far as the amount of gratuity and other retrial benefits are concerned the same has already been paid to

the petitioner. The controversy remains with regard to the payment of the dues under the Voluntary Retirement Scheme (hereinafter referred as "VRS").

The petitioner was appointed on the post of ancillary worker (crane operator) in the month of July, 1966 under the control of Bharat Heavy Electrical Ltd. (BHEL), Haridwar through its General Manager, Haridwar. The case of the petitioner is that in the year 2001, BHEL has introduced a scheme for voluntary retirement. In response to the said scheme, the petitioner has applied for availing the scheme. The request of the petitioner for voluntary retirement was accepted by the management on 13.7.2001.

According to the office order dated 13.7.2001, the petitioner has retired on 2001 from the post of Ancillary worker grade-IV.

As will appear from the order dated 13.7.2001 issued by BHEL, the following direction were given which is quoted below:

> वितरण सूची में अकित विभागो से बेबाकी प्रमाण पत्र प्राप्त होने पर देय राषियों का भुगतान उन्हे कर दिया जायेगा। स्वैच्छिक सेवानिवृत स्कीम के अन्तगर्त देय राषि का भुगतानकेवल कम्पनी मकान खाली करने पर ही मिलेगा।

In pursuance of the aforesaid directions, the petitioner has vacated the accommodation, therefore he has become entitled for the amount of the VRS on vacating the house accommodation occupied by him. The petitioner has stated in para no. 9 of the Writ petition that in compliance of the order dated 13.7.2001 he has vacated the house on 28.12.2001 which was allotted to him in lieu of his service. The report of the incharge has also been annexed alongwith the Writ Petition at Annexure-III in respect of vacating the accommodation.

The petitioner has stated that so far another condition for obtaining no dues certificate, the respondent no. 3 has not issued no dues certificate in favour of the petitioner inspite of the fact that the petitioner has made

representation to that effect but till today, no dues certificate has not been issued.

The learned counsel for the respondent has filed the counter affidavit in reply to the averments contained in the writ petition.

In para 3 of the counter affidavit, it was admitted that the petitioner has opted for VRS and his request was accepted and accordingly the petitioner has already retired on 24.7.2001. He has also admitted that the gratuity to the extent of Rs. 1,84,520/- has been paid to him apart from the Provident Fund amount to Rs. 1,49,169/-. Paragraph 3 of the counter affidavit is quoted below:

> *"That with regard to para 1, only this much is admitted that the petitioner has opted for VRS and his request was accepted and he retired on 24th July, 2001. His statutory payments like gratuity to the tune of Rs. 1,84,520/- and Provident Fund amount to Rs. 1,49,169/- have been paid. So far amount pertaining to VRS is concerned, the same was not paid for want of non-production of NO DUES CERTIFICATE of Estate Department of BHEL. The petitioner was unable to produce/submit No Dues Certificate as he has illegally occupied the land of BHEL at Bhabootiwala situtated at Village Ahmedpur Karach within the Township of BHEL Ranipur, Hardwar.*

Sri Kohli has contended that since no dues certificate has not been received and therefore, the benefit of payment of VRS cannot be given to the petitioner. Sri Kohli has further stated that the petitioner has illegally occupied the land of the Bharat Heavy Electricals Ltd. (hereinafter referred as "BHEL") at Bhabootiwals situated at Village Ahmedpur Karach within the Townhip of BHEL Ranipur, Hardwar.

The petitioner has filed a rejoinder affidavit in which it was stated that it is wrong that he has illegally occupied the land of the BHEL. In fact the land is being used by the petitioner from the time of his grandfather, which was purchased in the year 1940. It was also stated that the BHEL has already taken the steps under the Pubic Premises Act the same is already pending.

In para 15 of the rejoinder affidavit, it has been stated as under:-

> *"It is wrong to say that the petitioner has illegally occupied the land of the petitioner. The land in dispute are separate one from the any service benefit of the petitioner and cannot be made a ground for denying the retrial benefit. The respondents if feel that eh petitioner has illegally occupied the land belong to them, they are free to initiate legal proceedings available to them under the law which they are already pursuing. The alleged ground of withholding the retrial benefit is a glaring examples of misuse of powers and is in clear violation of fundamental right of the petitioner as provided under article 21 of the Constitution of India."*

As will appear from the averments made in the rejoinder affidavit that the grandfather of the petitioner has occupied the land by way of sale deed of the year 1940, there is no averment in the counter affidavit that the land in question was ever given to the petitioner in lieu of hi service which he had joined in July, 1966.

It has come on the record that in lieu of service he was given the house, the same has already been vacated by the petitioner and as such any property belonging to the ancestor or the petitioner cannot be clubbed with the property of the BHEL so as to deprive the petitioner from the necessary benefits under VRS.

It has come on record that the respondent has already instituted proceedings under the Public Premises Act. Suffice it to state that the respondents are at liberty to proceed and the same shall be decided on its own merits.

It is well settled that pension and gratuity are no longer a bounty. VRS is a part of the retirement benefits like pension and gratuity. It has been held in AIR 1985 S.C.C page 356 State of Kerala Vs. M. Padmanabhan Nair as under:

> *"Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay be visited with the penalty of payment of interest at the current market rate till actual payment.*
>
> *Usually the delay occurs by reason of non production of the LPC (Last Pay Certificate) and the NLC (No Liability Certificate) from the concerned Departments but both these documents pertain to matters records whereof would be with the concerned Government Departments. Since the date of retirement of every Government servant is very much known in advance we fail to appreciate why he process of collecting the requisite information and issuance of these two documents should not be completed at least a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following month. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over emphasized and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement."*

The petitioner is entitled for the benefit of VRS by virtue of Article 21 of the Constitution of India. Article 21 of the Constitution of India provides as under:-

"21. ***Protection of life and personal liberty-*** *No person shall be deprived of his life or personal liberty except according to procedure established by law.'*

Therefore, 'right to live' includes right to get all benefits, which the petitioner is entitled.

The learned counsel for the petitioner has relied upon the judgment in 2001 (91) FLR 166 (Supreme Court) between Gorakhpur University Vs. Dr. Shitla Prasad Nagendra and S.C.C. Vol. –VI 2001 page -591, the Apex Court has held as under:

> *"This Court has been repeatedly emphasizing the position that pension and gratuity are no longer matter of any bounty to be distributed by Government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement where of should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest.'*

> *"Withholding of quarters allotted, while in service, even after retirement without vacating the same has been viewed to be not a valid ground to withhold the disbursement of the terminal benefits. Such is the position with reference to amounts due towards provident fund, which is rendered immune from attachment and deduction or adjustment as against any other dues from the employee. In the context of this, mere reliance on behalf of the appellant upon yet another decision of a different Division Bench of the very High Court rendered without taking note of any of the earlier decisions of this Court but merely proceeding to decide the issue upon equitable consideration of balancing conflicting claims of*

respective parties before it does not improve the case of the appellant any further.

As held by the Apex Court in 2003 (4) SLR page 490 Vice-Chairman & Managing Director Vs. r. Varaprasad, that VRS is a contract between employer and employee. The observations of the Apex Court are quoted below:

> "*It is a matter of contract between the Corporation and the employees. It is not for the courts to rewrite the terms of the contract, which were clear to the contracting parties, as indicated in the guidelines and circulars governing them under which Voluntary Retirement Scheme floated.*

Similar view has been taken by the High Court of Bombay that once VRS was accepted, the employee concern was entitled to the benefits of the scheme. The observations of the court [in 2000-II-LLJ page 1255, Nandini Nitin Patil Vs. State of Maharashtra] is quoted below:

> "*Consequently, petitioner was perfectly justified in accepting the representation made by the respondent no. 2-Corporation and accordingly she accepted Voluntary Retirement. In other words, she accepted it to her prejudice by accepting upon the said circular dated September 26, 1988. In these circumstances we are satisfied that the respondent-Corporation is estopped from denying the said benefit to the petitioner."*

Withholding of the benefits of VRS attracts Article 21 of the Constitution of India as rightly pointed out by the Apex Court that it is a matter of bread and butter. The observations of the Apex Court in AIR

S.C.W. October 2003 Part-37 page-4745 {U.P. Drugs & pharmaceuticals Co. Ltd. Vs. Ramanuj Yadav] is quoted below:

> *" The approach to be borne in mind while interpreting the welfare legislation is illustrated in Surendra Kumar Verma etc. Vs. Central Government Industrial Tribunal-cum-Labour Court, New Delhi and another ((1981) 1 SCR 789) where this Court has observed that semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation I designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursion."*

Although the petitioner was entitled for the interest but looking to the circumstances that there has been a litigation pending between the petitioner and the respondent with regard to the possession of the land, the title of the same has to be decided by the authorities in separate proceedings.

In view of the facts and circumstances, respondents are directed to pay the amount payable to the petitioner under the VRS within a period of 15 days from the date of the receipt of the certified copy of the order.

In case, the respondent fails to pay the amount, the petitioner will be entitled to claim the interest at the rate of 18% on the VRS amount.

The Writ Petition is allowed with costs. The respondents are directed to pay the cost of Rs. 2,000/-

(Rajesh Tandon, J.)

Dated 13.10.2003
Rawat